

2000 WL 356789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 29, 2000

Re: Informal Opinion

*1 The Honorable John M. Knotts, Jr.
Member
House of Representatives
323-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Knotts:

Your opinion request has been forwarded to me for reply. You have asked whether a private investigator, hired by a third party, may be prosecuted under the "Harassment" portion of Section 16-3-1700(A) of the South Carolina Code of Laws.

Section 16-3-1700 defines both harassment and stalking. While the elements of each are different, both definitions include a provision which provides that the offense "does not include words or conduct that is protected by the Constitution of this State or the United States and does not apply to law enforcement officers or process servers performing their official duties."

In an opinion dated September 22, 1995 (copy enclosed), we addressed the stalking portion of Section 16-3-1700 "as it pertains to licensed private investigators in the process of doing their jobs." The opinion focused on the constitutional protections quoted above and found "the legitimate work of a private detective falls within the exceptions for constitutionally protected words or conduct set forth in the anti-stalking statute. Such legitimate activity could, therefore, be asserted as a valid defense for any prosecution under the anti-stalking law if the facts warrant that the activity is legitimate." (emphasis in original). The opinion concluded:

The anti-stalking statute must be read in conjunction with, not as a repeal or amendment of, the Private Detective Statute. As a general rule, if a private detective's conduct is not legitimate, in other words, beyond the scope of that authorized by virtue of his registration as a private detective under the Private Detective Act, then obviously that person's status as a registered private detective would not immunize such unlawful conduct from liability or prosecution. If the charge is stalking, each and every element of the offense would have to be determined by a jury, beyond a reasonable doubt.

However, if the detective's conduct is within the scope of authority as a registered private detective under South Carolina law, the detective would possess a valid defense to any charge of stalking because his conduct would be "protected by the Constitution of this State or the United States ...". Of course, the ultimate resolution of this question depends upon the particular facts.

I believe this same conclusion would apply to the "Harassment" portion of Section 16-3-1700. If the detective's conduct is within the scope of authority as a registered private detective under South Carolina law, the detective would possess a valid defense to any charge of harassment because his conduct would be "protected by the Constitution of this State or the United States" Of course, the ultimate resolution of this question depends upon the particular facts.

***2** This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am
Sincerely yours,

Paul M. Koch
Assistant Attorney General

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